



CANNON BUILDING
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STATE OF DELAWARE
BOARD OF FUNERAL SERVICES

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PUBLIC MEETING MINUTES:	BOARD OF FUNERAL SERVICES
MEETING DATE AND TIME:	Tuesday, November 26, 2013, 10:00 a.m.
PLACE:	861 Silver Lake Boulevard, Dover, Delaware Conference Room B , second floor of the Cannon Building
MINUTES APPROVED:	Tuesday, February 25, 2014

MEETING MINUTES

MEMBERS PRESENT

Chad Chandler, Professional Member, President
Duwayne Casini, Professional Member, Secretary
S. Keith Parsell, Professional Member
Mary Byrd, Public Member
Danna Levy, Public Member
Marceline Knox, Public Member

MEMBERS ABSENT

Bill Torbert, Professional Member

DIVISION STAFF/DEPUTY ATTORNEY GENERAL

Kevin Maloney, Deputy Attorney General
Sheryl Paquette, Board Liaison
Bob Powers, Board Liaison

OTHERS PRESENT

Bennie Smith, Bennie Smith Funeral Home

CALL TO ORDER

Mr. Chandler called the meeting to order at 10:01 a.m.

REVIEW AND APPROVAL OF MINUTES

The Board reviewed the minutes of the September 24, 2013 meeting. Ms. Byrd made a motion, seconded by Ms. Levy, to approve the minutes as corrected. The motion carried unanimously.

CONSIDERATION OF MOTION FOR TEMPORARY SUSPENSION (Ms. Deborah Harris-Nock, Funeral Director)

Mr. Maloney stated all Board members have received a copy of the Complaint, as well as the motion for a meeting for temporary suspension. Mr. Maloney stated the position of the State is that Ms. Nock is an immediate and imminent danger to the public's health, welfare, and safety requiring emergency action. The State is seeking that the Board issue an order temporarily suspending the license of Ms. Nock pending a final

hearing based on the merits of the complaint. Mr. Parsell asked if a suspension of Ms. Nock's license would affect her business and Mr. Maloney stated that the suspension would be against Ms. Nock's Funeral Director license, not the facility permit. After more discussion by the Board, Ms. Byrd made a motion, seconded by Ms. Knox, that the Board temporarily suspend the license of Ms. Deborah Harris-Nock, pending a final hearing of the complaint. The motion was unanimously approved.

UNFINISHED BUSINESS

Miller Funeral Establishment Permit

Mr. Chandler read the letter from Melvin's Funeral Home dated November 8, 2013 stating that Mr. Miller could not accomplish all of the required tasks requested by the Board at their establishment. Mr. Maloney felt that the limitations of Mr. Miller would not meet the minimum standards per the law to grant the Facility Establishment Permit. Ms. Byrd made a motion, seconded by Ms. Levy, to deny licensure to Mr. Miller. The motion carried unanimously.

Bennie Smith – Compliance Issue

Mr. Smith updated the Board regarding his compliance. He stated that he has completed the final required course in personnel management. Mr. Smith also provided the Board with a list of training he has provided for his staff members. Mr. Chandler asked Mr. Smith to describe how he handled the training requirement. Mr. Smith stated he holds an employee meeting once a month to conduct training. Additionally, he has started an employee manual that he will have completed and available at the next meeting. Mr. Chandler asked Mr. Smith if this has been helpful for his staff and himself. Mr. Smith stated, "Yes, it is a reminder of the laws and regulations." Mr. Parsell asked how many licensed directors Mr. Smith had on staff, to which he replied he had six in Delaware. Mr. Maloney asked Mr. Smith to bring the employee manual to his next meeting. Mr. Maloney stated that Mr. Smith's probation was only for three months and the Board could vote to lift his probation contingent on his appearance at the next regularly scheduled meeting. Ms. Byrd made a motion, seconded by Ms. Levy, to lift the probationary status on Mr. Smith's license contingent on his appearance at the next regularly scheduled meeting. The motion carried unanimously.

NEW BUSINESS

RATIFICATION OF LICENSURE

Laura Smith, Funeral Resident Intern

Kevin Smith, Funeral Director

Mr. Parsell made a motion, seconded by Ms. Byrd, to ratify the above licenses as specified. The motion carried unanimously.

REVIEW OF RESIDENT INTERN REPORTS

Scott A. Clemens

Sara E. Chandler

Ms. Knox reviewed both resident intern reports and made a motion to approve, seconded by Ms. Byrd. The motion carried unanimously.

REVIEW OF APPLICATIONS FOR LICENSURE

Brian Clymer, Funeral Director

Cynthia Reimbold, Funeral Director

Tracy Bailey, Funeral Director

Mr. Casini reviewed and approved all three applications for licensure. Mr. Parsell made a motion, seconded by Ms. Levy, to approve all the applications contingent on them passing the state exam. The motion carried unanimously.

REVIEW OF APPLICATIONS FOR CONTINUING EDUCATION APPROVAL

Regulatory Support Services, Inc

Understanding the New Safety Data Sheets and Infectious Disease,- Various Dates, Requesting 3 CEUs

Mr. Casini reviewed the continuing education application from the Regulatory Support Services. Ms. Byrd made a motion, seconded by Ms. Knox, to approve the listed course as presented. The motion passed unanimously.

The International Conference of Funeral Service Examining Boards
110th Annual Meeting – February 26-27 2014, Requesting 22.5 CEUs

These CEUs are already approved so no further Board approval necessary. This was put on the agenda in error.

Joint Sunset Review Process

Ms. Kay Warren, Deputy Director of the Division of Professional Regulation, reviewed the draft of the Joint Sunset Review questionnaire with the Board. Ms. Warren started by listing the changes to legislation since the last Sunset Review. Mr. Parsell was concerned that the currently proposed House Bill 188 would be put forth as tacit endorsement by the Board by them signing off on the Sunset Review questionnaire. Ms. Warren assured the Board that they will be able to respond to the bill and provide their input during the Sunset Review process.

Ms. Warren then proceeded to review the challenges of the Board. Mr. Chandler felt that HB188 is going to have a negative impact on every funeral service establishment in the state. Mr. Chandler felt that the proposed bill to join cemeteries and funeral homes as one organization is bad for business and bad for the public as he felt this would limit the consumer's ability to go elsewhere and would be 'stuck' buying everything from one place, which could allow prices to be driven up. Mr. Parsell was concerned that cemeteries with substantial land would be able to put a funeral home on their property, while funeral homes may not be able to purchase enough land to build a cemetery. Additionally, the Board felt that Funeral Directors represent a "service" to the public, while cemeteries are more of a 'retail shop'. Finally, funeral homes are required to place the money pre-paid by customers into a trust, and cemeteries do not. If the cemetery fails, the person who pre-paid will lose their money, but if the funeral home goes under the money gets returned.

Mr. Parsell was also concerned about funeral inspections. He asked what the scope of the inspections would be and Ms. Warren said that would be decided by the Board and added to the Rules and Regulations if necessary. The proposed legislation will give the Board and the division authority to carry out the inspections. Not having an inspection could lead to sanitization and hygiene issues for both staff members and the public. Deputy Attorney General Maloney said the proposed legislation would authorize 'inspection agents' from the Division of Professional Regulation to conduct the funeral home inspections. Mr. Parsell stated that when he opened a new facility, an inspector from the state came by with a list of specific items the facility was required to have. He asked if any inspections are currently being done. Ms. Warren stated she was not aware of any.

Mr. Chandler said the Board should find a way to make sure that Funeral Director's responsibilities are being handled by Funeral Directors. Ms. Warren said that is currently handled by members of the public, including other funeral directors, filing a complaint.

Mr. Parsell suggested the creation of an Embalming Room Technician license that would assist in dressing, cleaning, moving the body etc., and would be tied into a list of opportunities for improvement. He then asked if this is a Rule/Regulation or would it require a legislative act. Mr. Maloney stated that this would be a legislative act. Mr. Parsell stated that there is already an exemption for administrative personnel to work, and then asked if they could create an embalming room technician exemption. Mr. Maloney said that would have to be in the statute as well. Ms. Warren asked Mr. Parsell to clarify if he wanted the Embalming Room Technician to be licensed or not so the state could set a minimum level of competency. Mr. Parsell felt that this would be similar to a paralegal or nursing assistant. Ms. Warren added this to the Sunset Review questionnaire to be further discussed.

Mr. Parsell stated there are no regulations on free standing crematories. He was concerned that the rules and regulations state that anyone embalming, burying, or cremating a body has to fall under the control of a Funeral Director. There are agencies advertising as a cremating service but work as a funeral service and do not have an establishment permit. Mr. Maloney asked if they are considered to be working as a funeral service

without a license. Mr. Maloney said per the rules and regulations, cremations sale and services is a funeral service and if you are engaged in a funeral service, you should have a Funeral Establishment license. Mr. Parsell stated that this is an advertising issue. He said anyone can open a cremation business, but the advertising rules state that you must promote where your business is located, including the address, and the cremation services are not following this advertising rule. Mr. Maloney read Rule 12.3.2 that states, "The contents of any advertising shall include the name of the funeral establishment, its address and its business phone number." Mr. Parsell felt that crematories would act independently and decide to advertise directly to the public. He said cremation must be handled by a licensed funeral establishment and Mr. Maloney agreed.

Ms. Byrd stated that she has an issue with the way complaints are handled. She said, if a complaint is investigated by the Division of Professional Regulation the Board never knows about it. She said if a member of the public comes to her and asks about the status of a complaint, she cannot give them a response. The Board does not really know what is going on and are 'out of the loop'. She asked if there is a better way to address complaints. Mr. Maloney responded that the responsibility is with the Division of Professional Regulation. Ms. Warren stated that complaints are not open to the public. Complaints also do not fall under FOIA, it is simply an allegation. It becomes public knowledge when it goes to the AG's Office and a formal complaint is filed. Ms. Byrd stated that she could not confidently tell a member of the public that their complaints are investigated because she does not know what is happening. Mr. Maloney stated that all complaints are investigated, but it is by the Investigative Unit of the Division of Professional Regulation and not the Board. Mr. Maloney stated that since the Board is the deciding entity on the complaint, it would be highly improper for a Board member to be privy to facts and allegations that they would later have to make a ruling on. Furthermore, the Investigative Unit may, from time to time, request the aid of a Board member for their expert knowledge, but then that Board member must recuse themselves of future dealings with that complaint. Ms. Warren also assured the Board that all complaints are investigated except those that fall outside of the board's statute and rules. Mr. Parsell inquired about where there could be a breakdown of the complaints by categories of types of complaints. Ms. Warren stated that she would include the processing of complaints as a challenge in the Sunset Review questionnaire.

Ms. Warren then moved on to 'opportunities for improvement'. Mr. Parsell suggested re-addressing the codes that talk about needing a Medical Examiners' signature to sign permits giving authority to cremate. He said with budget cutbacks, this 'waiting' becomes burdensome to the public. The families cannot plan for a burial and cannot receive death certificates in a timely fashion. During long weekends, the availability of a Medical Examiner can take days. Mr. Chandler disagreed and said that he likes having a signature above his own and feels that this may be a problem with the county that Mr. Parsell is in, instead of the code. Mr. Maloney brought up that this falls under Title 16, Del. C. §3159 which is under the purview of the Division of Public Health, not the Board, but can be addressed if the Board feels it is necessary. Mr. Parsell asked if the state does any sort of audit to see if establishments have an establishment license. Ms. Warren said the state does not currently do this, that this is currently complaint driven. Mr. Parsell then asked if the Board can do some sort of audit. Ms. Warren said the Board could look at this once the board and the division have authority to conduct inspections. Mr. Parsell suggested that when the Funeral Director re-applies, they must state where their license is hanging and then have the Division of Professional Regulation check that against the Funeral Establishment license database to see if it is a licensed establishment. Ms. Warren asked administrative support if the information is already on the application. Mr. Powers stated that the application does not currently ask where the license will be displayed or where the Funeral Director is currently working. Mr. Chandler stated that a Funeral Director does not have to be tied to a funeral home. Mr. Parsell suggested listing on the application the address where the Funeral Director will be working.

COMPLAINT UPDATES AND CONSENT AGREEMENTS

COMPLAINT UPDATES

Closed by Attorney General's office

27-17-12 closed for insufficient evidence

27-15-12 closed for insufficient evidence

27-18-12 closed for insufficient evidence

Closed by Division of Professional Regulation
27-19-12

New Complaint Process

Mr. Maloney explained the Investigation Unit will assign complaints to Board members only when they need their professional expertise.

Correspondence (Re: Complaint #27-01-11)

The Division received a letter from the Respondent's lawyer (Complaint #27-01-11). Per the Respondent's Order, the Probationary period will not end until March 30, 2014. Mr. Maloney said the Division should notify the Respondent that the Board agrees the requirements of the Probation have been met; however, the Probationary period is not over until March 30, 2014. The Respondent can then apply to have the Probationary period lifted and the Board will then review the request and make a decision at that time. Ms. Byrd made a motion, seconded by Ms. Levy, to follow through with Mr. Maloney's suggestion. The motion carried unanimously.

HEARING OFFICER RECOMMENDATIONS

None

CONSENT AGREEMENTS

None

CORRESPONDENCE

International Conference of Funeral Service Examining Boards 2014

The Division of Professional Regulation received the renewal fee and forwarded it appropriately.

Election for District Director to the Conference Board

The Board was informed of the upcoming elections to the Conference Board. No one wished to put their names forward.

OTHER BUSINESS BEFORE THE BOARD (for discussion only)

Mr. Parsell had a question regarding the fast tracking process. Mr. Powers explained the Division previously received delegation authority by the Board to fast track "clean" applications for the license types of resident interns and funeral director limited, which the Board would then ratify at their next Board meeting.

PUBLIC COMMENT

None

NEXT MEETING

The next Board meeting will be held on Tuesday, January 28, 2014, at 10:00 a.m. in Conference Room B located on the second floor of the Cannon Building at 861 Silver Lake Boulevard, Dover, Delaware.

ADJOURNMENT

There being no further business, Ms. Knox made a motion, seconded by Mr. Parsell, to adjourn the meeting at 12:43 p.m. The motion to adjourn carried unanimously.

Respectfully submitted,



Robert Powers
Board Liaison

The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Board members and the public in supplementing their personal notes and recall for presentations.